

PT 97-41

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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DISABLED AMERICAN VETERANS	)		
CHAPTER 76	)	Docket #	95-61-5
Applicant	)		
	)	Parcel Index #s	14-00-063-505
v.	)		14-00-063-510
	)		
THE DEPARTMENT OF REVENUE	)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS	)	Administrative Law Judge	

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RECOMMENDATION FOR DISPOSITION

Synopsis:

The hearing in this matter was held at 1100 Eastport Plaza Drive, Collinsville, Illinois on April 10, 1997, to determine whether or not Marion County Parcel Index Nos. 14-00-063-505 and 14-00-063-510 qualified for exemption during the 1995 assessment year.

James Fletcher, Commander of the Disabled American Veterans Chapter 76, (hereinafter referred to as the "Applicant"), was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant was the owner of the parcel during the 1995 assessment year; secondly, whether the applicant is an exempt organization; and lastly, whether these parcels were used by the applicant for civic, charitable and patriotic purposes during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned these parcels during the 1995 year. It is also determined that the applicant is a veterans organization.

Finally, it is determined that the applicant did not use the property for exempt purposes during the 1995 assessment year.

Findings of Fact:

1. The position of the Department, that Marion County Parcel Index Nos. 14-00-063-505 and 14-00-063-510 did not qualify for a property tax exemption, was established by the admission into evidence of Department's Exhibits 1 through 4.<sup>1</sup>

2. The parcels at issue comprise one lot which is improved with a one-story, handicap-accessible building. (Dept. Ex. No. 1; Tr. p. 12)

3. The applicant acquired the parcels pursuant to a warranty deed dated May 15, 1990. (Dept. Ex. No. 1)

4. The applicant is a veterans organization that was granted a charter by the National Constitution of the Disabled American Veterans Inc., on August 9, 1954. (Dept. Ex. No. 1; Tr. p. 7)

5. The applicant was incorporated in the State of Illinois under the General Not For Profit Corporation Act and was reinstated under that Act on May 10, 1995. (Dept. Ex. No. 1)

6. The applicant uses the property in question for meetings of its organization on the second and fourth Wednesday of each month. The District meeting is held there annually. (Dept. Ex. No. 1)

7. The building is also used for a free Veterans Day breakfast and Christmas dinner, served to veterans and their immediate families, and possibly to members of the public. (Dept. Ex. No. 1; Tr. p. 11)<sup>2</sup>

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<sup>1</sup>. The transcript refers to Parcel Index Nos. 14-00-063-305 and 14-00-063-510. The first number is incorrect in the transcript.

<sup>2</sup>. There is conflict in the testimony and the application submitted to the Department by the applicant. The application states the Christmas dinner is served to the veterans and their immediate families. The testimony of Mr. Fletcher was that the Christmas dinner is open to all and it is even advertised in the newspaper as open to the public.

8. The applicant also maintains a sleeping room on the property. The room was unused during the 1995 assessment year. (Dept. Ex. No. 1; Tr. pp. 16-17)

9. During the period of April 1, 1994, through March 31, 1995, the applicant had income from: dues, sales of poppies during the "forget-me-not" drive, donations, and sales of beer at the DuQuoin Fair beer tent, for a total income of \$7,131.30. (Dept. Ex. No. 1; Tr. pp. 15-16)

10. During the same time period, applicant incurred expenses for: salaries and employee benefits, postage and office supplies, the "forget-me-not" drive, upkeep of the building, and programs and donations, for a total of \$6,488.95. (Dept. Ex. No. 1; Tr. pp. 9-10, 12-14, 19-20)

11. The applicant does not have a cash bar on the premises, nor do they play Bingo there. Swearing is also not allowed in the building. (Tr. p. 9)

12. Regarding the requested exemption and lack of counsel, the applicant testified, "I talked to two attorneys. I talked to two different ones and read both their law books. The law reads that it's impossible for us to get tax exemption because of the way it read. I already knew that when coming, but we had to try. We had to present our case at least." (Tr. p. 11)

#### Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to the authority granted by the Constitution, the legislature has enacted statutory exemptions from property tax. The provision at issue is found at 35 **ILCS** 200/15-145 and states:

All property of veterans' organizations used exclusively for charitable, patriotic and civic purposes is exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967) Regarding the conflicting testimony and application, I find that the events that the applicant held were for the applicants' benefit.

In the case of North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967), the Supreme Court of Illinois held that the predecessor statute to 35 ILCS 200/15-145<sup>3</sup> was constitutional and that the provision granting an exemption to a veterans organization required the organization's use to encompass all three of the required uses: civic, patriotic, and charitable. The Court went on to hold that the applicant's usage of the property for its meetings, wedding receptions, meetings of various other groups, and the bar maintained on the premises primarily for members, necessitated a finding by the Court that the primary use of the property was not exempt.

Applicant argues in the instant case that they do not have a bar, that bingo is not played on the premises, and that "we are as close to being a church as we can be." Although I agree that the foregoing conditions show a slight dissimilarity in applicant's activities from those of the applicant in North Shore Post No. 21, that alone does not authorize the granting of a property tax exemption in this case. There is no dispute that the applicant's endeavors are certainly commendable and benefit a great number of people. The Court has stated, however, that the use must be civic, patriotic, and charitable.

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<sup>3</sup>. At the time Northshore Post No. 21 was decided, the exemption for veterans organizations was found at Ill.Rev. Stat. 1963, chap. 120, par. 500.18.

The applicant uses the property for social purposes when it conducts the meetings, dinners, and other activities it holds on the premises. The applicant has failed to show that the activities it conducts satisfy the three-prong test of charitable, civic, and patriotic usage that the statute requires.

I therefore find that North Shore Post No. 21 is the controlling case law regarding the statutory language at issue and that the applicant has failed its burden of proof to qualify for exemption. The applicant in its testimony agreed that they do not, in fact, qualify.

I take administrative notice that this parcel was at issue in a prior decision issued by the Department pursuant to Docket No. 90-61-1. Circuit Court Judge Sauer upheld the Department's recommendation that the parcels be denied a property tax exemption in Disabled American Veterans, et al. vs. Illinois Department of Revenue, Marion County No. 92-TX-1.

I therefore recommend that Marion Parcel Index Nos. 14-00-063-505 and 14-00-063-510 remain on the tax rolls for 1995 and be assessed to the applicant.  
Respectfully Submitted,

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Barbara S. Rowe  
Administrative Law Judge

July 2, 1997